

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DSM IP ASSETS, B.V. & DSM BIO-BASED  
PRODUCTS & SERVICES, B.V.,

Plaintiffs and Counter-Defendants

ORDER

v.

16-cv-497-wmc

LALLEMAND SPECIALTIES, INC. &  
MASCOMA LLC,

Defendants and Counterclaimants.

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The court held an additional telephonic conference today, addressing open pretrial housekeeping matters identified at yesterday's conference and contested exhibits. The purpose of this order is to memorialize rulings made on the record.

IT IS ORDERED that:

- 1) Consistent with the discussion regarding exhibits, the parties may brief the following issues:
  - a. As to exhibits 134, 139, and 792, the parties may brief their relevance in the damages phase of trial. Defendants' brief is due by noon on Wednesday, May 9, 2018, and plaintiffs' response is due by noon on Thursday, May 10.
  - b. The parties may brief the applicability of Rule 408 to their negotiation of a possible license of the '998 patent. Plaintiffs' brief is due at noon on Wednesday, May 9, and defendants' response is due at noon on Thursday, May 10.
  - c. Defendants may brief their opposition to the introduction of RB3 in the damages phase of trial as evidence of the lack of an available noninfringing alternative. Defendants' brief is due by noon on Wednesday, May 9, and plaintiffs' response is due by noon on Thursday, May 10.
- 2) Plaintiffs are to resubmit their list of defendants' exhibits, noting those to which they continue to maintain a legitimate foundation objection after the parties have met and conferred.

- 3) Plaintiffs' motion to strike (dkt. #269) is GRANTED. Defendants have simply failed to raise a legitimate basis to amend their straight-forward admission, especially on the eve of trial. During closing, defendants may argue the existence of any nuances they believe exist with respect to the scope of that admission.
- 4) Attached is the final PowerPoint presentation with the slides regarding the patent moved to the front before the scientific background, as discussed at the conference.

Entered this 4th day of May, 2018.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge